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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,129	07/12/2004	Martin Clive-Smith	A-760423/DNM	5632
7590 Donald N MacIntosh Law Offices of Donald N MacIntosh 180 Montgomery Street Suite 600 San Francisco, CA 94104			EXAMINER TRAN, HANH VAN	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 11/23/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/501,129

Applicant(s)

CLIVE-SMITH

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-4, 6-8 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4, 6-8, 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 5/30/2007.

#### ***Drawings***

2. The drawings were received on 5/30/2007. These drawings are acceptable.
3. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

#### ***Claim Objections***

4. Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. More specifically, claim 16 is currently depending on cancelled claim 1; for the purpose of this examination, the examiner is considering that claim 16 depends on claim 17.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 2-4, 6-8, and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 17, there is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble clearly indicates that a subcombination is being claimed, i.e., "[A] fabricated hinge configured for mounting a folding corner post and end wall upon a platform base of a collapsible flatrack container, the hinge comprising..." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of a fabricated hinge, the folding corner post and end wall upon a platform base of a collapsible flatrack container is being only functionally recited. The problem arises when at least one of the folding corner post, end wall, platform base, or collapsible flatrack container is positively recited within the body of the claim, such as on lines 4-6 of claim 17. The examiner cannot be sure if applicant's intent is to claim merely the hinge or the hinge in combination with the corner post. Applicant is required to clarify what the claim is intended to be drawn to, either the hinge alone or the hinge in combination with corner post, and the language of the claim is amended to be consistent with the intent. For the purpose of this examination, the examiner is considering that the claim is drawn to the combination of a hinge and corner post.

In claim 17, lines 4 and 5, the recitation of the hinge including "elements" secured to corresponding "elements" of the folding corner post is indefinite for failing to adequately

structural limitations to the "elements" in order to clearly define the metes and bounds of the claimed invention.

In regard to claim 15, since claim 17 recited inner and outer hinge sections, the recitation in claim 15 of "with an 'I' section inner hinge portion" and "a 'U' section outer hinge portion" render the claim indefinite for failing to clearly define whether said inner and outer hinge portions are the same or different from the ones recited in claim 17.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 2-4, 6-8, and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,755,472 to Clive-Smith.

Clive-Smith discloses a collapsible flatrack comprising all the elements recited in the above listed claims including, such as shown in Figs. 1-2, a hinge assembly comprising an inner portion pivotally connected to a U-shaped outer portion 11 by a pivot pin 5, said pivot pin 5 operatively mounted in aligned apertures 38, 39 of the inner and outer hinge portions and extending there between, the inner hinge portion composing a plurality of discrete elements including inboard and out board hinge flanges of a first large cross-section rigidly secured to an intervening web 15 of a second dissimilar cross-section, folding posts 9, end walls 10, and a platform base 2; wherein the outer hinge portion comprises a U-shaped.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clive-Smith in view of USP 3,735,713 to Glassmeyer.

Clive-Smith discloses all the elements as discussed above except for the inner hinge portion having an I-shaped.

Glassmeyer discloses a collapsible flatrack comprising an I-shaped portion in order to increase the overall strength, while reducing the overall weight of the flatrack. In view of the teaching of Glassmeyer, it would have been obvious to modify the structure of Clive-Smith by providing the inner hinge portion having an I-shaped portion in order to increase the overall strength, while reducing the overall weight of the flatrack, as taught by Glassmeyer, since both teach alternate conventional collapsible flatrack structure, used for the same intended purpose, thereby providing structure as claimed.

***Response to Arguments***

12. Applicant's arguments filed 5/30/2007 have been fully considered but they are not persuasive. In response to applicant's argument on pages 7-8 that the hinge of '472 patent is of more traditional and relatively inflexible construction, while the hinge of the present invention is built-up or fabricated from multiple discrete elements, the examiner respectfully disagrees and takes the position that the pending claims are article claims, which must distinguish from the prior art of record in term of structures.

13. Applicant's arguments with respect to claim 15 fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT *HVT*  
August 19, 2007

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*Lanna Mai*